

Service Date: May 13, 1999

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Application)	UTILITY DIVISION
of Havre Pipeline Company to Increase)	
Rates and Charges to its Shippers on its)	DOCKET NO. D98.6.127
Transmission System.)	ORDER NO. 6083c

ORDER COMPELLING DISCOVERY RESPONSES

Findings of Fact

1. The Montana Public Service Commission (Commission) granted late intervention to Black Hills Exploration and Production, Inc. (Black Hills), on March 30, 1999. Pursuant to the Procedural Schedule in Order No. 6083a as last amended by agreement of parties and staff action, on March 30, 1999 Black Hills submitted discovery requests to the applicant Havre Pipeline Company (Havre Pipeline), as did Montana Power Trading and Marketing (MPTM).

2. Because its witnesses were scheduled to be out of the office, Havre Pipeline requested additional time to respond to the data requests by telephone request to Commission staff counsel on April 2, 1999. On April 5, 1999, Havre Pipeline filed a Request for Additional Time to Object and Respond to Data Requests, indicating that opposing counsel had no objection to the requested extension. Black Hills filed a response to Havre Pipeline's request on April 6, 1999, stating that it had advised Havre Pipeline's counsel that it did not agree to an extension of time to file objections. Black Hills only agreed to extend the time to respond to data requests to April 13, 1999.

3. On April 7, 1999, Havre Pipeline filed two separate documents with objections to data requests propounded by Black Hills and MPTM. In general, Havre Pipeline alleged that the discovery requests were not directly related to the role of Ocean Energy as managing member, not directly related to rebuttal testimony, unduly burdensome, irrelevant or unlikely to lead to

relevant evidence, beyond the scope of discovery, violating attorney-client privilege and/or constituting attorney-client work product.

4. Black Hills and MPTM responded to Havre Pipeline's objections on April 9, 1999 (received at the Commission April 12). MPTM believed that it might have worked out discovery issues with Havre Pipeline's counsel, but reserved the right to further respond to the objections. MPTM's understanding was that Havre Pipeline agreed to provide requested information, including the information for Ocean Energy as managing partner, any drawings (in lieu of "schematics"), copies of documents filed at FERC, and copies of other documents.

5. Black Hills, however, maintained that Havre Pipeline's objections were untimely and without merit. In general, Black Hills argued that the major issue of the case was whether the new compressors for which Havre Pipeline seeks recovery of expenses in transmission rates are gathering or transmission facilities. If determined to be gathering facilities, Black Hills maintained that they were put in place to benefit Ocean Energy, 60 percent owner of Havre Pipeline. To determine what are appropriate costs to recover in transmission rates would require technical data in the possession of Havre Pipeline and its operator, Ocean Energy. Black Hills said that the information requested is relevant to the decision on transmission rates. Further, Black Hills cannot shield materials by claims of irrelevance or attorney-client privilege.

6. On April 13, 1999 at its regularly scheduled work session, the Commission overruled Havre Pipeline's objections to the data requests and directed Havre Pipeline to fully respond.

7. On April 15, 1999, Havre Pipeline filed a request for an "oral hearing" on Havre Pipeline's objections to Black Hills data requests. Black Hills filed a Motion for an order amending the procedural schedule on April 16, 1999, supported by MPTM and the Montana Consumer Counsel. Maintaining that Havre Pipeline persisted in not responding to the discovery, Black Hills filed Consolidated Motions on April 19, 1999, requesting an order from the Commission compelling Havre Pipeline to provide responsive answers that actually provide the information requested. According to Black Hills, Havre Pipeline expected Black Hills to obtain information limited to what Havre Pipeline chose to provide, but only at the Billings, Havre Pipeline or Denver offices. Black Hills also requested an order vacating the remainder of the procedural order until responsive answers are filed.

8. On April 20, 1999, MPTM filed Objection to Havre Pipeline Company's Responses to [MPTM's] Data Requests and Motion to Vacate Hearing. MPTM stated that it was clear that Havre Pipeline would not provide adequate answers in time for the hearing. According to MPTM, Havre Pipeline expected it to travel to Havre, Denver or Billings to inspect and copy only the documents that Havre Pipeline agreed to produce. However, complying with Procedural Order No. 6083a requires an original and ten copies of all documents satisfying the request to be filed with the Commission and copies served on all parties.

9. At its work session on April 20, 1999, the Commission vacated the public hearing date of April 26, 1999 and scheduled oral argument for April 29, 1999 on all outstanding discovery objections to data requests and responses and motions. The Commission rescheduled the public hearing to June 16 and 17, 1999 in Havre, Montana.

10. On April 29, 1999, the Commission heard oral argument on the discovery motions and objections from John Alke for Black Hills, Susan Callaghan for MPTM and Janice Rehberg for Havre Pipeline. Just prior to the oral argument, Ms. Rehberg circulated Havre Pipeline's response to Black Hills' Consolidated Motions.

11. By letter to Black Hills counsel dated May 3, 1999, Havre Pipeline's legal counsel agreed "that whatever is to be produced, may be produced at the PSC or at our Helena offices for inspection and copying. As you know, the task of reproducing discovery data 16 times is, in and of itself, a major project and this file is already taking far too much space in my files and the Commission's."

12. At its work session on May 4, 1999, the Commission (1) affirmed the original decision on April 13, 1999, which overruled Havre Pipeline's objections to Black Hill's and MPTM's data requests; (2) directed Havre Pipeline to respond to the data requests with complete, non-evasive answers, with failure to do so resulting in Havre Pipeline being unable to make the claims in the case related to the issue central to each request, with staff to prepare an order compelling Havre Pipeline to respond; and (3) directed staff to work with parties on a subsequent discovery and procedural schedule that will hold to the June 16-17 hearing, if at all possible.

Summary of Oral Argument on Discovery, April 29, 1999

Black Hills Exploration and Production, Inc. (Black Hills)

13. At the oral argument on the discovery motions, Mr. Alke argued on behalf of Black Hills in support of his motions to compel answers to data requests and to vacate the hearing date. He maintained that the information Black Hills requested is essential for the Commission's decision on the issues. Havre Pipeline serves the Bear Paw Field, which has three major producing units (Tiger Ridge, Bullock and Sherrard). Blaine County No. 1, a large compressor station in the middle of the Tiger Ridge unit, is capable of producing high discharge pressures into a high-pressure pipeline, which interconnects with the Many Islands Pipeline. In the Sherrard unit, Blaine County No. 3, a smaller compressor, produces moderately high discharge pressures to the Montana Power Company and also has a pipeline to Blaine County No. 1. A third compressor, Hill County No. 1, also has a pipeline connecting with Blaine County No. 1.

14. When FERC authorized transfer of the facilities from Northern Natural to Havre Pipeline, 70 miles of these three pipelines and compressors were considered transmission facilities. However, there are 500 miles of pipeline in Havre Pipeline, and all but the 70 miles are gathering, Mr. Alke argued. When FERC authorized the transfer, everything from the suction side of the three compressors was gathering, except for the gas transported from Hill County No. 1 to Blaine County No. 1, which FERC considered transmission.

15. Three groups own Havre Pipeline: Ocean Energy, 56 percent, Klabzuba (of which Black Hills has purchased an interest), 28 percent, and 15 separate producers the remaining 16 percent. Mr. Alke explained that the pressures in producing fields decline through time and the gas in the wells cannot flow into the gathering lines, as happened in the fields served by Havre Pipeline. To correct this problem, Havre Pipeline's operator, Ocean Energy, installed three compressors in the Tiger Ridge Unit, each attached to a separate gathering line. Ocean Energy replaced a high discharge pressure compressor with low discharge pressure compressors in Hill County No. 1, for the purpose of reducing pressures at the wellhead and increasing reserves and deliverability. Mr. Alke argued that these compressors provide a classic gathering function in reducing pressures at the wellhead and allowing more gas to be injected into the lines. Referring to the testimony of Montana Consumer Counsel's witness, Frank Buckley, that these facilities are

gathering, Mr. Alke argued that Havre Pipeline should receive a transmission rate decrease, not increase.

16. Mr. Alke argued that the information Black Hills requested in its data requests is essential to developing a record as to what is gathering and what is transmission, for the purpose of determining the transmission rate. If the Commission allows Havre Pipeline to roll gathering costs and expenses into the transmission rate, that would give an unfair competitive advantage to Ocean Energy, he argued. Black Hills wants to develop its property and drill new wells, but that would be cost-prohibitive to have to pay for Ocean Energy's gathering costs in the transmission rate, while paying for its own gathering system.

17. Mr. Alke maintained that all of Black Hills' 46 data requests relate to the compressors and costs. Havre Pipeline's objections are primarily based on grounds of relevance and burden to produce. However, Mr. Alke argued that every request related to location of wells, gathering and/or the compressors is relevant, or tends to lead to relevant information. Relevant information includes whether a producer, such as Havre Pipeline's operator Ocean Energy, is normally required to pay for gathering facilities and whether the wells are benefited by the compressors. The location and ownership of these wells is relevant to demonstrate who should be responsible for the costs of the compressors, argued Mr. Alke. In addition, Mr. Alke believed that it was relevant to determine what was transmission and gathering facilities on Blaine County No. 3, which he admitted had some transmission function, in that it must inject gas at high pressure into the Montana Power pipeline. Wellhead pressures would also be indicative of whether the facilities provided purely compression (gathering) functions for Ocean Energy or transmission functions, but Havre Pipeline refused to provide the information, claiming irrelevance. Presenting a print-out report done for Havre Pipeline by another company, Mr. Alke said that he knew that Havre Pipeline had most of the requested information in a computerized form, and that there is no burden in providing it. Klabzuba obtained the information from Ocean Energy that Havre Pipeline had refused to produce for Black Hills, saying that it did not exist.

18. Mr. Alke objected to Havre Pipeline's responses as evasive, telling Black Hills to travel to five different locations in the United States and copy some of the information that Havre Pipeline permits Black Hills to see. Alternatively, Havre Pipeline provided a part of the information on a request and said that the remainder was irrelevant, too much trouble, subject to a

prior objection, and/or subject to a possible future objection. He objected that Havre Pipeline insisted on providing processed information, instead of providing the raw data.

Montana Power Trading and Marketing (MPTM)

19. Ms. Callaghan argued on behalf of MPTM. She stated that MPTM's experiences with Havre Pipeline's responses to data requests were similar to those of Black Hills. Havre Pipeline objected to all of the last set of MPTM's data requests. She thought she had worked out the discovery issues with Havre Pipeline and filed her understanding with the Commission, reserving the right to object because of past experience with Havre Pipeline in discovery in linking objections with answers. Havre Pipeline, despite its objections, agreed to provide everything requested. However, once again the few answers provided to the last set were linked with objections. Other answers said that Havre Pipeline would produce documents at distant locations. Ms. Callaghan asked that the Commission require Havre Pipeline to fully answer MPTM's data requests, not linking the answers with objections. She asked that Havre Pipeline be directed to send copies of all the responses, no matter where they have to search for them, to the parties and to the Commission. She further asked that all the documents be filed in time to process for the hearing in June, to allow filing of the prehearing memoranda.

20. Ms. Callaghan said that another factual issue is that MPTM requested that standards of conduct be established for Havre Pipeline as a regulated open access transmission facility, since Ocean Energy, as managing partner, and all the other owners also own production. MPTM's concern was that all marketers, shippers and producers should have access to information at the same time.

21. Ms. Callaghan pointed out that none of the intervenors are asking the PSC to assume jurisdiction over gathering. Rather, the information is necessary to determine what is gathering and transmission to set the correct transmission rate.

Havre Pipeline Company (Havre Pipeline)

22. Ms. Rehberg argued on behalf of Havre Pipeline. She outlined some of the history of the ownership of Havre Pipeline, admitting that Ocean Energy, Inc., is undisputedly a major owner. She maintained that it would be difficult to prove that Ocean Energy is not paying its fair share, because Ocean owns more in the field than its proportionate ownership interest in Havre

Pipeline. Ms. Rehberg revisited the Commission's decision to allow late intervention for Black Hills, alleging that its participation was delaying the hearing.

23. Ms. Rehberg reminded the Commission that it has no jurisdiction over gathering systems. She argued that Ocean Energy, although managing and operating Havre Pipeline, is a separate entity, and should not have to provide information. Only Havre Pipeline is a party and should only have to provide information in its possession and control ("within the box of Havre Pipeline"). Havre Pipeline owns gathering and transmission facilities, but does not own wells, and therefore should not have to provide information on ownership of wells, she maintained.

24. Ms. Rehberg indicated that she had made her objections, because she was faced with the dilemma of preserving the record when she could not reach her witnesses. Because of the time crunch and the fact that the responses had gone out with the objections on April 13, the date of the Commission's action, Ms. Rehberg requested oral argument to explain. Meanwhile, she described the efforts she had made to comply with what she determined were legitimate requests. Some of the information she agreed to provide under a protective order, because of the competitive nature of the business (there are parties interested in purchasing the system). She stated that it would take a lot of work to provide all the requested documents because they are scattered all over and would require her to go to Houston, Denver and Havre to look in files.

25. Ms. Rehberg questioned the reasonableness of going to all the different locations to find the documents, maintaining that she had tried to produce those that she believed to be responsive and significant. Ms. Rehberg questioned what the ownership of the wells has to do with the rate increase hearing. It was also her belief that the ownership of the wells would also require a title opinion. The requests on the compressors and the upgrades would take a considerable amount of time and work. She had the materials her witness believed he had reviewed, and she can look in some other files. However, she maintained that the issue of ownership of the wells was a ruse to get the gathering agreement, which Ms. Rehberg insisted she should not have to provide because the Commission has no jurisdiction over gathering. Further, she could find no relevance to the questions on maintenance of the compressors after installation. She maintained that the data requests from Black Hills were not directly related to the rebuttal testimony, as required by the procedural order or to matters raised before.

26. Ms. Rehberg maintained that there are separate entities, Ocean Energy and Havre Pipeline, and separate facilities, transmission and gathering. She believed that the discovery and the hearing should be limited to addressing transmission rates. She questioned what the suction pressures on 400 wells and the line pressures on 500 miles of gathering lines would have to do with the transmission rates. She asked that the ownership, suction, line and discharge pressures of the 400 wells be deemed unnecessary. Ms. Rehberg concluded by stating that it was never her intention to be evasive and non-responsive. She believed that she could go through the materials and provide sufficient information for the parties to gather the information they need.

Havre Pipeline's Response

27. Mr. Alke responded that it was clear that Havre Pipeline wanted to process everything, rather than let parties make their own interpretations from the raw data. All he has asked for were reports, he maintained. He countered the claim that Havre Pipeline would have to do calculations, since the reports are produced for the company monthly. There is no reason for legal counsel for Havre Pipeline to review, analyze and process the information. To the claim that Havre Pipeline does not own the wells or have knowledge of the ownership, Mr. Alke responded that its operator, Ocean Energy, knows where the wells are, because every well has a meter owned by Havre Pipeline. This data is readily available on the monthly reports, and Havre Pipeline uses this information to send the bills to the producers.

28. Mr. Alke further responded that certain of Black Hills' data requests related directly to rebuttal testimony of Havre's witness who testified that the new compressors solved some mechanical problems and run time problems with the Blaine County No. 1 processors. These questions related directly to the significant increase in operating and maintenance expenses, Mr. Alke argued.

MPTM's Response

29. Ms. Callaghan stated that none of the intervenors are asking the Commission to assert jurisdiction over gathering. It is important to get information on gathering operations to determine the difference between transmission and gathering as the system is operated now, versus how it was operated in the past. Ms. Rehberg conceded that some of the compressors do a little gathering, a little transmission. The question is what does the system do more of, gathering or transmission? Therefore, she maintained that the information on what is gathering, and therefore

not properly part of the transmission rate, is relevant. By determining what costs go into the transmission rate, the Commission will not be asserting jurisdiction over gathering. She said that the intervenors should have the opportunity to make their own determinations on the information, in order to present their theory of the case. Although she expected to work out the settlement objections with Havre Pipeline, she asked that the Commission make the determination that MPTM not have to go to remote locations to review data for reasons previously given.

Responses to Additional Issues of Commissioner Rowe

30. Commissioner Rowe indicated that matters of confidentiality could be protected by a protective order, to which parties appeared to agree. On the issue of what is within the control of Havre Pipeline, Mr. Alke pointed out that the Commission has jurisdiction to scrutinize affiliate relationships such as that between Havre Pipeline and Ocean Energy. In this instance, the scrutiny must be particularly intense, Mr. Alke argued, because Havre is maintaining that Ocean Energy does not have to provide information because it is a producer. Whether Ocean Energy would be individually benefited by actions of Havre Pipeline in this docket, when the actions are also those of Ocean Energy, is relevant, according to Mr. Alke. He said that once Havre Pipeline could decide to provide raw, unprocessed data, it would be easy to sit down and work out the discovery issues.

31. Mr. Alke asserted that everything requested was "relevant," as demonstrated by the Commission's sustaining Black Hills' position on relevance. He alleged that Havre Pipeline raised the issue of relevance in its witness's rebuttal testimony on expenses of the compressors.

Further Havre Pipeline Responses

32. Ms. Rehberg acknowledged that Ocean Energy is the managing member of the partnership, performing the administrative tasks and providing the operations in the field. Havre Pipeline's members, including Ocean Energy, make the decisions on matters such as upgrades, based on a 70 percent vote. She said that Havre Pipeline does not keep records on the wells, or perform any operating functions. Ocean Energy as the managing member operating the pipeline has the information on the whole system, including the compressors, meters, and pipelines. Havre Pipeline owns the transmission system and all the gathering system, she stated.

Commission Decision and Analysis

33. The Commission affirms the decision on April 13, 1999, which overruled Havre Pipeline's objections to Black Hill's and MPTM's data requests. The Commission directs Havre Pipeline to respond to the data requests with complete, non-evasive answers, with failure to do so resulting in Havre Pipeline being unable to make the claims in the case related to the issue central to each request. The Commission expects parties to develop a discovery and procedural schedule that will hold to the June 16-17 hearing, if at all possible.

34. There are a number of issues. One issue in the Motions and Objections filed in this cause and argued orally is whether Ocean Energy must comply with discovery requests. Ocean Energy is the managing and operating partner of Havre Pipeline Company and approximately 60 percent owner. Another issue is what information must be provided on gathering systems. Intertwined and central to the Commission's determination on transmission rates is the question of whether the investment in the compressors is properly attributed to gathering or to transmission. A related issue raised by intervenors is whether the investment in the compressors was for the benefit of Ocean Energy as a gathering function.

35. The Commission determines that Ocean Energy, as the managing partner and operator of Havre Pipeline, must comply with the discovery requests for information in its possession on the gathering and transmission systems, including information on the wells, compressors and related pressures. It is not permissible for Havre Pipeline to shield information of its operator as an affiliate under the assertion that they are separate entities. Havre Pipeline does not operate its own system, and the information on the system is necessary to a decision on whether the transmission rate increase is justified. To the extent the operation and maintenance expenses are attributable to the gathering and not the transmission system, the Commission must determine whether these costs should be recoverable in the transmission rate.

36. The Commission in past decisions has not dismissed discovery requests at the outset on claims of irrelevance. At the hearing, the Commission will determine whether information is relevant, on a motion of the party opposing it to exclude the information and a showing that it is not relevant. Without answering the discovery requests, Havre Pipeline would prejudice the intervenors from any opportunity to make a case that the evidence they would have liked to introduce is relevant. Ms. Rehberg argued that the parties would have enough information to make

their arguments on what are gathering and transmission and what costs should be in transmission rates. But without providing unfiltered information, Havre Pipeline would be expecting the intervenors to present their arguments with Havre Pipeline's processed data. The Commission determines that it is unacceptable not to allow the intervenors access to unprocessed information.

37. Havre Pipeline did not persuade the Commission on the question of burden to produce the information. The Commission's procedural rules and its procedural orders state that the parties are encouraged to freely exchange data requests to obtain information, as compared to the formality of discovery in the Montana Rules of Civil Procedure. The rules and the procedural order required an original and ten (10) copies of all documents to be filed at the Commission, and served on all parties. The Commission does not accept the argument that Havre Pipeline cannot locate the information at its various offices and make the copies as required, when much larger utilities with offices in various locations manage to do so. Finally, the Commission does not expect intervenors to have to travel to a multitude of locations to obtain requested information. Havre Pipeline must provide the information pursuant to the Procedural Order.

Conclusions of Law

1. The Montana Public Service Commission is invested with full power of supervision and regulation of public utilities, subject to the provisions of Title 69, Chapter 3, Montana Code Annotated (MCA). The Commission has the general powers to do all things necessary and convenient in the exercise of the powers conferred on the Commission by statute, including regulating the mode and manner of all investigations and hearings of public utilities and other parties before it. §§ 69-3-102, 69-3-103 and 69-3-106, MCA.

2. Havre Pipeline is a public utility subject to the Commission's jurisdiction. Havre Pipeline is required to follow the procedures and orders of the Commission in requesting an increase in public utility rates. § 69-3-101, MCA and Title 69, Chapter 3, Part 3, MCA.

3. The Commission has the authority to inquire into the management of the business of all public utilities, the duty to keep itself informed as to how the utility business is conducted, and the right to obtain from any public utility all necessary information to enable the Commission to perform its duties. § 69-3-106, MCA.

4. The Findings of Fact are incorporated herein as Conclusions of Law, to the extent applicable.

Order

Havre Pipeline is directed to comply with the discovery process and respond to the data requests, as described in this order.

DONE AND DATED this 3rd day of May, 1999, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

GARY FELAND, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision.
A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.